IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

LETTERS PATENT APPEAL NO.152 OF 2006
IN
WRIT PETITION NO.1265 OF 2006

Smt.Shakuntala Pravinbhai Saraiya ..Appellant
v/s.
The Union Carbide India Ltd.
(Now known as Eveready Industries Ltd.
and others ..Respondents

Mr.Vinod Shetty for the appellant.

Mr.Santosh Shetty for the respondent No.1.

CORAM : R.M.LODHA &
S.J.VAZIFDAR, JJ.

DATED : 18TH JULY, 2006.

P.C.

Heard Mr.Vinod Shetty, counsel for the appellant.

2. The only statement that is made in the statement of claim is that the worker, in fact, has worked for more than 240 days. It is not even stated that the work for more than 240 days was in the preceding year. Rather, it is admitted in the statement of claim that the workman has not been given continuous work by

the company. The defence of the employer was that the worker was employed purely on temporary basis in connection with the temporary work/temporary increase in work and has not completed 240 days of continuous service in the preceding year.

3. That the burden lies on the workman to prove that he worked for 240 days continuously in the preceding year admits of no legal ambiguity. The worker miserably failed to establish that he had worked for 240 days in the preceding year.

4. The counsel for the appellant submitted before us that an application was made by the worker for direction to the employer for production of the documents relating to the insurance and provident fund and also the production of muster rolls, pay rolls and record of overtime and since the aforesaid documents were not produced by the employer, the adverse inference ought to have been drawn.

5. In its reply to the application, M/s.Union Carbide India Limited submitted that the unit was sold and transferred to M/s.Oswal Agri Mills Limited and that they do not possess nor do have in their custody the documents in regard to the employment and/or non-employment of the worker.

6. M/s.Oswal Agro Mills Limited in their reply submitted that the worker in question was employed by Union Carbide India

Limited on temporary and contractual basis and the documents like pay sheets, muster roll, provident fund, ESI were not handed over to them except the personal files of the permanent employees. They categorically stated that the record asked for by the workman are not in their possession.

7. From the replies filed by Union Carbide India Limited as well as M/s.Oswal Agro Mills Limited, no inference can be drawn that they deliberately withheld the documents, the production of which was sought by the worker.

8. The burden lay on the worker to establish that he had worked for 240 days in the preceding year. The worker miserably failed to discharge the burden. As a matter of fact, as noticed by us above, there is not even specific pleading by the worker in the statement of claim that he had worked for 240 days in the preceding year.

9. The counsel for the appellant relied upon the judgment of the Rajasthan High Court in the case of Chief Engineer, Irrigation v. Kamlesh and others , 1996 I CLR 1128. The said judgment does not help the case of the appellant as it holds that once it is found that the workman is in continuous service as per the requirement of clause (1) of section 25-B, then it is immaterial whether he has worked in number of days in particular year. In that case, the Labour Court recorded the finding that the workmen

were in continuous service for the years 1978 to 1985 as per the requirement of clause (1) of section 25-B. In the present case, on the other hand, the finding of the Labour Court is that the worker was employed only for the specific period on account of temporary increase in work or in place of workman who was temporarily absent. In the present case, thus, the worker miserably failed to establish that he was in continuous service as per the requirement of clause (1) of section 25-B.

10. The learned counsel for the appellant also relied upon the judgment of the Supreme Court in the case of Gopal Krishnaji Ketkar v. Mohamed Haji Latif and others, AIR 1968 SC 1413 in support of his proposition that a party in possession of best evidence must produce the same and if the best evidence is withheld, the Court ought to draw an adverse inference against such party. We have already recorded that the respondent cannot be held to have deliberately withheld the documents, the production of which was sought by the appellant. Moreso, as already observed by us, the initial burden to prove that he has worked for 240 days continuously in the preceding year lay on the worker which he failed to discharge.

11. No case for interference is made out. Appeal is dismissed in limine.

(R.M.LODHA, J.)

(S.J.VAZIFDAR, J.)